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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/462,224	01/03/2000	MARCEL HENK ANDRE JANSSENS	702-991961	4808

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EXAMINER

JULES, FRANTZ F

ART UNIT

PAPER NUMBER

3617

DATE MAILED: 07/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/462,224

Applicant(s)

JANSSENS, MARCEL HENK  
ANDRE

Examiner

Frantz F. Jules

Art Unit

3617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 05 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 8-12 and 14-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15-19 is/are allowed.
- 6) ☒ Claim(s) 8, 10-12 and 14 is/are rejected.
- 7) ☒ Claim(s) 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 8, 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer (US 1,771,079) in view of Dortmunder Union (DT 916,830).

Fischer discloses in Fig. 3 a rail track comprising a rail (a) of asymmetrical cross-section such that the running surface of the head of the rail lies free, provided with a first layer of yielding material (u) which extends under the bearing surface of the foot of the rail (a), and with the side surfaces (r) of the rails (a) covered with a second layer (s, t) of yielding material having a greater stiffness value in the horizontal direction than the first layer of yielding material (u), wherein the first layer of yielding material (u) is physically separate from the second layer (s, t) of yielding material. The second layer having on one side of the rail a different stiffness than on the other side of the rail as the mass of the two layers are different.

Fischer discloses all of the features as listed above but does not disclose a rail track surrounded by layers of yielding material supported by a non-compressible concrete base body provided with a channel like recess. The general concept of providing a non-compressible concrete base body provided with a channel like recess to support a rail track assembly is well known in the art as illustrated by Dortmunder Union which

illustrates a non-compressible concrete base body (a) provided with a channel like recess to accommodate a rail track having first and second layers of yielding material surrounding the rail. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Fischer to include the use of a non-compressible concrete base body provided with a channel like recess to support the rail track surrounded by first and second layers of yielding materials in his advantageous rail track as taught by Dortmunder Union in order to prevent deflection of the rail track under loading.

3. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer and Dortmunder Union as applied to claim 8 above, and further in view of Fujita JP-209340).

#### Claim 14

Fischer and Dortmunder Union teaches all the limitations of claim 14 except for a rail track supported by a concrete base body having a layer of sound-absorbing material on the upper side of thereof. The general concept of providing a layer of sound-absorbing material on the upper side of a concrete structure is well known in the art as illustrated by Fujita which illustrates a concrete road surface having a layer of sound absorbing material on the top surface thereof, see abstract section. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Fischer to include the use of a layer of sound-absorbing material on the upper side of the concrete base body of his advantageous rail track as taught by Fujita in order to reduce noise level in the rail track.

***Allowable Subject Matter***

4. Claims 15-19 stand allowable. None of the references of record suggests a rail track having first and second layers of yielding material surrounding a rail and positioned in a concrete base body defining a recess to receive the rail assembly, wherein the space between the second layer and the channel-like recess is filled with a filler body of non-compressible material in the manner defined in the instant claim 15. Therefore, claims 16-19, depending therefrom, are considered to be allowable.

5. Claim 9 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. None of the references of record suggests a rail track having first and second layers of yielding material surrounding a rail and positioned in a concrete base body defining a recess to receive the rail assembly, wherein the space between the second layer and the channel-like recess is filled with a filler body of non-compressible material in the manner defined in the instant claim 9.

***Response to Arguments***

6. Applicant's arguments filed 06/05/03 have been fully considered but they are not persuasive

**A. Summary of applicant's argument**

In the amendment, applicant traversed the rejection of claims 8-12, and 14 for the following reasons:

Art Unit: 3617

1. The prior arts used in the rejection, Fischer and Dortmunder Union, does not disclose a second layer of yielding material having a greater stiffness value in the horizontal than the first layer of yielding material in the vertical direction.

**B. Response to applicant's argument**

1. In response to applicant's contention that both references of record, Fischer and Dortmunder Union, fail to disclose a second layer of yielding material having a greater stiffness value in the horizontal than the first layer of yielding material in the vertical direction, it must be recognized that both references disclose a second layer of yielding material identified as item g in the case of Fischer and item c in the case of Dortmunder Union. This second layer of yielding material is shown in Fishcher to have greater stiffness value in the horizontal direction than the first layer of yielding material which is identified as item u in Fischer. It is factual and accurate that the stiffness or rigidity of item g in the horizontal direction is greater than the stiffness of item u in the vertical direction given the fact that stiffness or rigidity of a similar material is proportional to thickness. In a similar manner, the second layer of yielding material c of Dortmunder Union is shown to have greater stiffness provided in the horizontal direction than that of the first layer of yielding material which is provided underneath the rail given the fact that stiffness or rigidity of a similar material is proportional to thickness. A copy of the translation of the German patent Dortmunder Union is provided for applicant's use.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Art Unit: 3617

Horose Kogyo, and Weber et al are cited to show related road or tie structures provided with sound absorbing material.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantz F. Jules whose telephone number is (703) 308-8780. The examiner can normally be reached on Monday-Thursday and every other Friday from 07:30 AM to 5:00 PM.

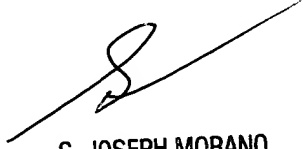
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph S. Morano, can be reached on (703) 308-0230. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

Frantz Jules  
Patent Examiner  
Art Unit 3617

FFJ

June 27, 2003



S. JOSEPH MORANO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600